

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

Criminal No. 4:03-CR-65-FL
Civil No. 4:11-CV-167-FL

FRANKLIN SMITH, JR.,)
Petitioner,)
)
v.) O R D E R
)
UNITED STATES OF AMERICA,)
Respondent.)

Having conducted an examination of petitioner's motion pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings and it appearing that dismissal is not warranted at this time, the United States Attorney is DIRECTED to file an Answer pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the above-captioned § 2255 Motion to Vacate, Set Aside or Correct Sentence, within **forty (40)** days of the filing of this order.

Additionally, because petitioner asserts challenges to his conviction based on the recent decision of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011), pursuant to Standing Order No.11-SO-3 (E.D.N.C. Oct. 18, 2011), the Office of the Federal Public Defender is appointed to represent petitioner in connection with these proceedings. The Clerk is DIRECTED to serve the Office of the Federal Public Defender with a copy of this order.

SO ORDERED.

This the 24th day of February, 2012.

/s/ Louise W. Flanagan
Louise W. Flanagan
United States District Judge